inconvenient results is no reason for not enforcing the enactment according to its plain meaning. Even apart from the provisions of sub-section (3) of Section 13 the exemption from duty under the Customs Duties (Exemption) Order, 1953 can in my view take effect only when the conditions therein laid down have been fulfilled; and those conditions have not been fulfilled until a proper officer of Customs has considered the situation and decided whether the articles are such as a passenger might reasonably carry for his own regular and private use. Section 13(3) removes any possible doubt as to the meaning to be attributed to the Exemption Order. In the circumstances of the case now before me no officer of Customs was given the opportunity before the goods were imported to express his satisfaction that the goods come within the conditions laid down in the Exemption Order; the goods were, therefore, dutiable at the time when the respondent actually imported them; and therefore as she failed to declare them she was clearly guilty of an offence under Section 129(1)(e) of the Customs Ordinance. In my opinion every passenger proceeding to the mainland is bound to declare all dutiable articles which he has with him and even used portable articles, if dutiable, remain liable to duty until they have been declared and allowed to pass by a Customs officer.

Mr. Meek, on behalf of the respondent, contended that there was insufficient evidence on the record to support the learned President's finding of a failure on the part of the respondent to declare. It is true that the 3rd Prosecution Witness, who was asked to search the respondent, asked her, immediately before the search, if she had anything to declare and the respondent then said she had a pair of bangles under her armpits. This declaration was, however, in my opinion too late. Nor did the suggestion that the respondent did not understand Malay and therefore could not be expected to declare when she was asked to do so by a Malay Revenue Officer impress me. The learned President accepted the evidence of the 2nd Prosecution Witness that he had asked the respondent if she had any dutiable goods and she said she had none. I am, therefore, of the opinion that the finding of the learned President that the respondent did not declare these bangles when first asked to do so was correct.

For these reasons I was of opinion that the acquittal by the learned President was wrong and I therefore reversed his order and substituted a finding that the charge of failing to declare was proved, together with an order that the respondent be admonished and discharged, under the provisions of Section 183 of the Criminal Procedure Code.

Owing to the extremely rigorous provisions of Section 123 of the Ordinance on being satisfied that an offence had been committeed I had no alternative but to order the forfeiture of the bangles which are valued at something over $800. Had I any discretion in the matter I would not in this case have ordered forfeiture of the bangles, as I think this is a punishment out of all proportion to the gravity of the crime. I think there is little doubt that this prosecution was based, at least to some extent, upon a misunderstanding. When Mr. Fudge, the Customs Officer asked the respondent why she was wearing these bangles up under her armpits where they were not visible she replied: "To deceive the customs Officers". Mr. Fudge, I think not unnaturally, assumed from this that the respondent was confessing to a deliberate attempt to evade Customs duty. It appears, however, from the evidence and the findings of the learned President that what the respondent really meant was that she genuinely believed herself entitled to import these bangles without duty as being part of her personal property and therefore concealed the bangles in order to avoid the business of being questioned about them and having to go to the trouble of arguing the whole question with the Customs as to whether or not they were liable to duty. Bearing this in mind and the fact that Mr. Fudge admitted in evidence that these bangles might reasonably be used as personal jewellery I think the offence committed was really no more than a technical one. The learned Deputy Public Prosecutor who conducted the appeal admitted that the main purpose of the appeal was to settle the question of law involved and as far as he was concerned it was not his object to obtain forfeiture of the bangles. I felt justified, therefore, in expressing the hope that the appropriate authorities will see fit to order the return of these bangles to the respondent. Pending a ruling as to this I ordered that the bangles in question be retained in Court pending further order.

*Order accordingly.*

Solicitors for the respondent: *Presgrave & Matthews.*

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## PUBLIC PROSECUTOR v. CHENG FAH

[A. Cr. J. (Wilson J.) Kuala Lumpur — December 2, 1952]

*Criminal procedure — Minor Offences Enactment (Cap. 46), s. 34(f) — Charge of loitering — Sentence.*

**The respondent was found loitering on the Klang Road at about 3.15 a.m. on July 30, 1952. He pleaded guilty to the offence contrary to s. 34(f) of the Minor Offences Enactment and was fined $5. The learned Magistrate stated that he took into consideration the fact that the respondent had been in the lock-up for a month and that no previous convictions had been brought**

to the notice of the Court and he considered that a further term of imprisonment would not be justifiable.

**Held:** it was not open to the Magistrate to pass a sentence of a fine under s. 34 of the Minor Offences Enactment.

[Editorial Note: Section 34(f) of the Minor Offences Enactment (Cap. 46) reads: "any person found between the hours of 11 p.m. and 6 a.m. loitering on any public road or private property and not giving a satisfactory account of himself may be taken into custody by any police officer without a warrant, and shall be liable to imprisonment for six months, . . ." There is no equivalent sub-section in the Minor Offences Ordinance (Cap. 24).]

CRIMINAL REFERENCE.

*Philip Clough* (Federal Counsel) for the appellant.

Respondent in person.

**Wilson J.** : — The respondent pleaded guilty to a charge that between the hours of 11 p.m. and 6 a.m. on the 30th July, 1952, he was found at about 3.15 a.m. loitering on the Klang Road and failed to give a satisfactory account of himself. He was found guilty of an offence contrary to Section 34(f) Cap. 46 and was fined $5.

The learned Magistrate stated that taking into consideration the fact that the respondent had been in the lock-up for a month and that no previous convictions had been brought to the notice of the Court he considered that a further term of imprisonment would not be justifiable.

The Deputy Public Prosecutor appealed on the ground that it was not open to the Magistrate to pass the sentence of a fine under Section 34 of Cap. 46. With this contention I agree. The Deputy Public Prosecutor however intimated that he does not press for a further term of imprisonment.

In the circumstances the fine of $5 is remitted and must be repaid to the respondent and the sentence of one month's simple imprisonment to date from the date of his arrest is substituted therefor.

*Order accordingly.*

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## PUBLIC PROSECUTOR v. AYASAMY

[A. Cr. J. (Briggs J.) Kuala Lumpur, December 17, 1952]

*Juvenile Court — Jurisdiction — Constitution — Juvenile Courts Ordinance, 1947, s. 4(2) & (3).*

This was an appeal by the Public Prosecutor against the acquittal of the respondent in the Juvenile Court. The appeal was based on several grounds but the learned Judge only heard argument on one of them, i.e. the question of jurisdiction.

The situation in this case was that the learned President sat with one adviser only and dismissed the case on the failure of the prosecution to call evidence. The question was whether the Court, in these circumstances, was properly constituted.

**Held:** it is not competent in law for a President to sit as a Juvenile Court for purposes of conducting a trial, unless he has the assistance of two advisers throughout the proceedings. It may be possible for him to make interim orders and to perform certain other functions in the absence of advisers, but the advisers are an essential element of a Juvenile Court conducting a trial, and their absence, or the absence of one of them, renders the proceedings unlawful and abortive.

MAGISTRATE'S CRIMINAL APPEAL.

*B. Sheldon* (Federal Counsel) for the appellant.

Respondent in person.

**Briggs J.** (delivering oral judgment): — This appeal is brought by the Public Prosecutor against the acquittal of the respondent in the Juvenile Court. It is based on several grounds, but I have only heard argument on one of them, which, in the view that I take of the appeal, is conclusive. That is the question of jurisdiction. The normal Juvenile Court before which a juvenile is tried consists of a Chairman, who is a President of Sessions Court, and who shall be assisted by two advisers in the exercise of his functions as a Juvenile Court. The provision in question is section 4(2) of the Juvenile Courts Ordinance, 1947, which reads :—

"A Juvenile Court shall consist of a District Judge who, in the exercise of his functions as a Juvenile Court, shall be assisted by two advisers chosen from a panel of persons resident in the State or Settlement nominated by the Ruler in Council or Resident Commissioner, as the case may be. One of such two advisers shall, if practicable, be a woman."

Sub-section (3) of section 4 reads as follows :—

"The functions of the advisers shall be to inform and advise the Court with respect to any consideration affecting the punishment or other treatment of any child or young person brought before it."

The question now before me is whether the limitation of the functions of the advisers to advising the Court as to 'punishment or other treatment' affects the meaning of sub-section (2) of the same section in such a way that it is not necessary for the advisers to assist the learned President in the exercise of functions other than those relating to punishment or treatment. The situation in this case was that the learned President sat with one adviser only and dismissed the case on the failure of the prosecution to call evidence. The question is whether the Court, in these circumstances, was properly constituted. I think it was not. Although the active functions of the advisers only begin after the accused is found guilty, and so becomes liable to punishment or other treatment, they have other passive functions at earlier stages of the proceedings. It is in my view necessary for them to be present during the hearing in order that they should have a full and complete view of the circumstances of the case, since without this they would not be able properly to advise on punishment. I think also that